

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0100
SALES AND USE TAX
For Years 1998 and 1999**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax—Best information available; failure to maintain adequate records

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-4(a); IC 6-8.1-5-4(c) IC 6-8.1-5-1(b).

Taxpayer argues that the proposed assessment should be reduced because, in the taxpayer's opinion, the auditor's assessment, which was based on the best information available, was unreasonable. Taxpayer contends that the majority of the expenses that were considered to be non-exempt by the auditor were, in fact, for exempt uses. However, taxpayer failed to maintain adequate business records.

STATEMENT OF FACTS

Taxpayer was acquired as part of a corporate merger in August of 1999. Before the merger, taxpayer owned a facility in Indiana that was one of five such facilities owned by the taxpayer in the United States. After the merger, few records existed for the no-longer-existent taxpayer. Because no records were available, the auditor made use of the best records available, which included the taxpayer's federal and state income tax returns. Taxpayer filed its final Indiana return in 1999. The Indiana facility was closed in 2000.

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DISCUSSION

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. IC 6-8.1-5-1(a). Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. IC 6-8.1-5-4 (a). A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times. IC 6-8.1-5-4 (c). The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC 6-8.1-5-1(b).

Taxpayer freely admits that it has no documentation aside from what was relied upon by the auditor that would tend to prove the assessment to be in error. Because the taxpayer cannot meet its burden of proof in overcoming the presumption by the proposed assessment, the information that the auditor relied upon will be deemed sufficient as the best information available.

FINDINGS

The taxpayer is respectfully denied.

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